

DAI & ASSOCIATES, P.C.
Joel Scott Ray (JR7750)
136-18 39th Avenue, Ste. 1102
Flushing, NY 11354
(718) 888-8880
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GINTER LOGISTICS SERVICE CO., LTD.,

Docket No.: 07-CIV-8677 (LAP)

Plaintiff,

NOTICE OF MOTION

-against-

ACH FREIGHT FORWARDING, INC., JIMIN ZHOU
a/k/a JIMMY ZHOU, XIAO JI HE d/b/a PACIFIC JIN
AN TRADING, INC. and XIN MAIO, INC.,

Defendants.

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C O U N S E L O R S:

PLEASE TAKE NOTICE, that upon the annexed Declaration of Joel Scott Ray made the 23rd day of June, 2008, together with the exhibits annexed thereto, and the Memorandum of Law dated June 23, 2008, and upon all of the pleadings and proceedings heretofore had herein, Plaintiff, GINTER LOGISTICS SERVICE CO., Ltd., ("GINTER"), by and through its attorneys, DAI & ASSOCIATES, P.C., shall move this Court before the Hon. Loretta A. Preska, U.S.D.J., at the United States District Courthouse for the Southern District of New York, 500 Pearl Street, Courtroom 12A, New York, NY 10007, returnable on a date to be determined by the Court, for an Scheduling Order pursuant to Federal Rules of Civil Procedure Rule 16(b) and Local Civil Rule 16.2, and together with such other and further relief that this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Civil Rule 6.1 of the United States District Court for the Southern and Eastern Districts of New York, any opposing affidavits and answering memorandum of law shall be served within four business days after service of the moving papers.

Dated: Flushing, New York
June 23, 2008

Yours, etc.,
Dai & Associates, P.C.

/s/
By: Joel Scott Ray (JR7750)
Attorneys for Plaintiff
136-18 39th Avenue, Ste. 1102
Flushing, NY 11354
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AN TRADING, INC. and XIN MAIO, INC.,

Defendants.

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**MEMORANDUM OF LAW OF
PLAINTIFF IN SUPPORT OF ITS
MOTION FOR A SCHEDULING ORDER**

DAI & ASSOCIATES, P.C.
Attorneys for Plaintiff
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UNITED STATES DISTRICT COURT
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GINTER LOGISTICS SERVICE CO., LTD.,

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AN TRADING, INC. and XIN MAIO, INC.,

Defendants.

-----X

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR SCHEDULING ORDER**

Plaintiff, GINTER LOGISTICS SERVICE CO., Ltd., ("GINTER"), by and through its attorneys, DAI & ASSOCIATES, P.C., respectfully submit this Memorandum of Law in support of its Motion for an Scheduling Order pursuant to Federal Rules of Civil Procedure ("FRCP") 16(b).

FRCP Rule 16(b), provides in relevant part:

(1) Scheduling Order.

Except in categories of actions exempted by local rules, the district judge – or a magistrate judge when authorized by locale rule – must issue a scheduling order:

- (A) after receiving the parties' report under Rule 26(f); or
- (B) after consult with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail or other means.

(2) Time to Issue.

The judge must issue the scheduling order as soon as practicable, but in any event within the earliest of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared. FRCP Rule 16(b) 2008 (emphasis added)

Additionally, Local Civil Rule 16.2 of the United District Courts for the Southern and Eastern Districts of New York provides that “[i]n any case referred to a magistrate judge by a district judge, the magistrate judge may make scheduling orders pursuant to Federal Rule of Civil Procedure 16(b), and may modify for good cause shown scheduling orders previously entered.”

The Complaint was served upon defendants Xia Ji He d/b/a Pacific Jin AN Trading, Inc. (“Pacific”) and Xin Miao, Inc. (“Xin Miao”) on October 18, 2007, upon defendants ACH Freight Forwarding, Inc. (ACH) and Jimin Zhou a/k/a Jimmy Zhou (Zhou) on October 16, 2007. Copies of proof of service are attached hereto as Exhibit “A.” On November 6, 2007, Defendants ACH and Zhou, by counsel, appeared in this Court by filing a Motion to Dismiss. On November 6, 2007, Defendant Pacific by counsel filed an answer to this court.

It has been over 249 days since the last Defendant in case was served with the Complaint and over 230 days since the last Defendant appeared in this Court. Clearly those times are outside the statutory time periods prescribed under FRCP 16(b)(2).

A good faith effort to go forward with a Rule 26(f) Conference was made. The Conference did not go forward because the Defendants’ motion remains *sub judice* and the resolution of said motion will determine the outcome of the Conference.

For the reasons stated in the foregoing, Plaintiff requests that the Court grant its motion for a Scheduling Order and together with such other relief that this Court deems just and proper.

Dated: Flushing, New York
June 23, 2008

Yours, etc.,
Dai & Associates, P.C.

/s/
By: Joel Scott Ray (JR7750)
Attorneys for Plaintiff
136-18 39th Avenue, Ste. 1102
Flushing, NY 11354
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GINTER LOGISTICS SERVICE CO., LTD.,

Plaintiff,

-against-

ACH FREIGHT FORWARDING, INC., JIMIN ZHOU
a/k/a JIMMY ZHOU, XIAO JI HE d/b/a PACIFIC JIN
AN TRADING, INC. and XIN MAIO, INC.,

Defendants.

-----X

Joel Scott Ray, an attorney duly admitted to practice before United States District

Court for the Southern District of New York, declares under the penalty of perjury as follows:

1. I am an Associate of DAI & ASSOCIATES, P.C. attorneys for Plaintiff,
GINTER LOGISTICS SERVICE CO., LTD. (GINTER).

2. I respectfully submit this Declaration in support of Plaintiff's motion for a
Scheduling Order pursuant to FRCP Rule 16(b) and Local Civil Rule 16.2 and together with such
other and further relief that this Court deems just and proper.

3. The Complaint was served upon defendants Xia Ji He d/b/a Pacific Jin AN
Trading, Inc. ("Pacific") and Xin Miao, Inc. ("Xin Miao") on October 18, 2007, upon defendants
ACH Freight Forwarding, Inc. (ACH) and Jimin Zhou a/k/a Jimmy Zhou (Zhou) on October 16,
2007. Copies of proof of service are attached hereto as Exhibit "A."

4. On November 6, 2007, Defendant Pacific by counsel filed an answer to
this court. A copy of Pacific's Answer is annexed hereto as Exhibit "B."

Docket No.: 07-CIV-8677 (LAP)

**ATTORNEY DECLARATION
IN SUPPORT OF PLAINTIFF'S
MOTION**

5. On November 6, 2007, Defendants ACH and Zhou, by counsel, appeared in this Court by filing a Motion to Dismiss. That motion was fully briefed and submitted to the Court on December 13, 2007. There has been no hearing regarding the motion, nor a determination of the motion. The motion remains *sub judice* at the bringing of this Motion.

6. It has been over 193 days since the submission of Defendants' Motion and over 230 days since a Defendant appeared in this action. In light of time requirements of Rule 16, as discussed in the accompanying Memorandum of Law, this Court should issue a Scheduling Order.

7. A good faith effort was made to conduct a Rule 26(f) conference. However, in light of the fact that Defendants' Motion remains *sub judice*, the Conference did not occur.

8. I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

Dated: Flushing, New York
June 23, 2008

Respectfully submitted,
DAI & ASSOCIATES, P.C.

/s/
By: Joel Scott Ray (JR7750)
Attorneys for Plaintiff
136-18 39th Avenue, Ste. 1102
Flushing, NY 11354
(718) 888-8880
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CERTIFICATE OF SERVICE

I, Joel Scott Ray, an attorney admitted to practice law before the United States District Court for the Southern District of the New York, hereby certify that on June 23, 2008, I served a true copy of the within **NOTICE OF MOTION, ATTORNEY DECLARATION and PLAINTIFF'S MEMORANDUM OF LAW** via regular United States Postal Service first class mail on the parties herein named:

THE LAW OFFICE OF BING LI, LLC
1350 Broadway, Ste. 1001
New York, NY 10018

KEVIN KERVENG TUNG, P.C.
33-70 Prince Street, CA-25
Flushing, NY 11354

XIN MIAO, INC.
110-90 Dunkirk Street, 1st Floor
Jamaica, NY 11412

/s/
Joel Scott Ray(JR7750)